



U.S. Department of Commerce
National Oceanic and Atmospheric Administration



U.S. Environmental Protection Agency

Mr. Greg Aldrich, Acting Administrator
Water Quality Division
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Mr. Aldrich,

The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of the Oregon Department of Environmental Quality's (ODEQ) "Implementation Ready Total Maximum Daily Load" (IR-TMDL) approach for the Mid-Coast Basin. The EPA and the NOAA provide this initial assessment pursuant to the technical assistance authorities of the Coastal Zone Management Act, specifically, 16 U.S.C. § 1455b(d). Moreover, the EPA and the NOAA provide this assessment consistent with paragraph 5 of a settlement agreement to resolve disputes in Northwest Environmental Advocates v. Locke, et al, Civil No. 09-0017-PK. Under the settlement agreement, the EPA and the NOAA agreed to provide this written initial assessment, including evaluation of whether implementation of the IR-TMDL approach to be applied in the Mid-Coast Basin, including safe-harbor best management practices (BMPs), is likely to result in actions that will achieve and maintain water quality standards (WQSs), as well as whether the ODEQ's plan for developing and updating TMDLs for all sub-basins in the Coastal Nonpoint Program management area using the IR-TMDL approach could satisfy the outstanding additional management measures for forestry condition on the State's Coastal Nonpoint Program identified in correspondence (dated May 12, 2010) from the EPA and the NOAA to the ODEQ. The May 12, 2010, letter identified dates to serve as interim milestones.

The EPA and the NOAA negotiated the settlement agreement based in part on the commitments that the ODEQ had made in its July 26, 2010, letter responding to the EPA and the NOAA's May 12, 2010, letter. In the July 26, 2010 letter, the ODEQ explained its continuing progress and deliberate intention to complete the Mid-Coast IR-TMDLs, which would have included specific safe-harbor BMPs, by June 30, 2012. The ODEQ also committed in that letter to meeting other interim milestones, including providing examples of the safe-harbor BMPs and additional detail on how the IR-TMDLs would address landslide prone areas and road management concerns. The ODEQ did not complete the Mid-Coast IR-TMDLs by June 30, 2012 and did not provide examples of safe-harbor BMPs or details about how the IR-TMDLs would address landslide prone areas or road management concerns. Instead, the ODEQ notified the EPA and the NOAA that the Mid-Coast IR-TMDLs will not be complete until June 30, 2013, or later.

The EPA and the NOAA recognize the complexities that Oregon faces in pursuing this new IR-TMDL approach and the extensive effort expended by the ODEQ's staff and management

toward ensuring its success. For example, the ODEQ has held numerous stakeholder advisory and technical workgroup meetings and has analyzed and presented a significant amount of information to support development of temperature, sediment, and bacteria IR-TMDLs for the Mid-Coast Basin. The EPA and the NOAA agree that such meetings and analysis provide important groundwork for the development of BMPs to meet TMDL water quality targets, and thus provide for completion of the Mid-Coast IR-TMDLs. As we have communicated, the EPA and the NOAA have anticipated that such IR-TMDLs could satisfy the outstanding condition for additional management measures for forestry on Oregon's Coastal Nonpoint Program.

Without even draft IR-TMDLs, examples of safe harbor BMPs, or any further detail on how the IR-TMDLs would address landslide prone areas and road management concerns, the EPA and the NOAA still do not have the information to support a determination regarding whether the IR-TMDL approach would: (1) enable Oregon to achieve and maintain applicable water quality standards, and (2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. The EPA and the NOAA therefore have concerns about whether the IR-TMDL approach would enable the State to demonstrate it can meet those goals and do so in a timely fashion.

To date, Oregon has achieved only limited progress in developing and identifying the specific BMPs capable of meeting both WQSs and the outstanding Coastal Nonpoint Program conditions. In order to evaluate whether Oregon has satisfied the additional management measures for forestry condition, the EPA and the NOAA request that the ODEQ accelerate its efforts to provide the following information as quickly as possible:

- Additional detail on how the ODEQ plans to determine the adequacy of the BMPs identified in the IR-TMDL process for meeting WQSs;
- Additional detail on the approaches the State plans to take to address landslide prone areas and forest roads;
- Examples of the safe-harbor BMPs Oregon would use to address:
 - protection of riparian areas, including for Type-N streams;
 - protection of landslide-prone areas;
 - management/maintenance of forest roads; and
- Mid-Coast IR-TMDLs, including load allocations and surrogate targets.

The enclosed assessment document provides additional information on what the EPA and the NOAA regard as positive aspects of the possible IR-TMDL process, current shortcomings, and what Oregon should do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable WQSs. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

Under the settlement agreement, the EPA and the NOAA agreed to announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we have shared with Oregon in the past, the requested information must be received by June 30, 2013, to provide sufficient time for the EPA and the NOAA to evaluate how the State proposes to satisfy its Coastal Nonpoint Program conditions and prepare the documents needed to meet the November deadline. The EPA and the NOAA staff remain

available to assist ODEQ staff in accelerating State action in advance of June 2013. Without a timely State submission designed to resolve the outstanding conditions, the EPA and the NOAA are concerned that we may not be able to announce our intent to fully approve Oregon's program by November 15, 2013.

Working with Oregon to achieve full approval of its Coastal Nonpoint Program is a priority for both federal agencies and we will continue to work closely with the ODEQ to expeditiously move its IR-TMDL effort forward and to enable the State to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource
Management
National Oceanic and Atmospheric
Administration

Daniel D. Opalski, Director
Office of Water and Watersheds
Environmental Protection Agency,
Region 10

Enclosure

cc: Mr. Dick Pedersen, Director, ODEQ
Mr. Eugene Foster, Watershed Management Manager, ODEQ
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School